

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

KIHEI NALU
515 Kihei Road
Kihei, Maui

REGISTRATION NO. 1503

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: September 23, 1982
Expires: October 23, 1983

SPECIAL ATTENTION

A comprehensive reading of this report by the prospective purchaser is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED JUNE 4, 1982 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF SEPTEMBER 9, 1982. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KIHEI NALU is a proposed fee simple condominium project to consist of one (1) six-story building and four (4) two-story buildings, containing a total of fifty-two (52) apartment units, with sixty-six (66) unassigned, uncovered parking stalls.

2. The developer of the project has filed all documents and materials deemed necessary by the Commission for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.

3. No advertising matter has been filed pursuant to the Rules and Regulations promulgated by the Commission.

4. The basic condominium documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment of Owners of KIHEI NALU and a copy of the approved floor plans) have not been filed in the Office of the recording officer.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514A of the Hawaii Revised Statutes, as amended, and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, September 23, 1982, unless a Final Public Report issues or the Commission upon review of the registration, issues an order extending the period of this report.

7. This Preliminary Public Report is made a part of KIHEI NALU condominium project. The developer has the responsibility of placing a true copy of this Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the receipt therefor.

NAME OF PROJECT: KIHEI NALU

LOCATION: 515 Kihei Road, Kihei, Maui, Hawaii, with approximately 2.19 acres committed to the Regime.

TAX MAP KEY: SECOND DIVISION: 3-9-1-43

ZONING: HM

DEVELOPER: Kihei Nalu Associates, a Hawaii limited partnership, the principal place of business and post office address of which is 1620 Pioneer Plaza, Honolulu, Hawaii 96813. The general partner of the limited partnership is: Ling Nalu Partners of the same address.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Ken Harimoto and D. Scott MacKinnon), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, Phone: 521-0400.

DESCRIPTION OF PROJECT:

1. Apartments. The proposed Declaration of Horizontal Property Regime and plans submitted by the developer indicate a fee simple condominium project consisting of one (1) six-story building referred to as Building "C" and four (4) two-story buildings referred to as Buildings "A", "B", "D" and "E" constructed principally of concrete and frame construction, with sixty-six (66) unassigned, uncovered parking stalls, and there will be fifty-two (52) freehold estates designated in the spaces within the perimeter and party walls of each of the fifty-two (52) apartment units contained in the buildings, which spaces, together with appurtenant lanais, if any, are referred to herein as "apartments" and are designated on said plans and described as follows:

Apartments A-101, A-102, A-103 and A-104 are located on the first and second floors of Building "A";

Apartments B-105 and B-106 are located on the first floor of Building "B";

Apartments B-205 and B-206 are located on the second floor of Building "B";

Apartments C-107, C-108, C-109, C-110, C-111 and C-112 are located on the first floor of Building "C";

Apartments C-207, C-208, C-209, C-210, C-211 and C-212 are located on the second floor of Building "C";

Apartments C-307, C-308, C-309, C-310, C-311 and C-312 are located on the third floor of Building "C";

Apartments C-407, C-408, C-409, C-410, C-411 and C-412 are located on the fourth floor of Building "C";

Apartments C-507, C-508, C-509, C-510, C-511 and C-512 are located on the fifth floor of Building "C";

Apartments C-607, C-608, C-609, C-610, C-611 and C-612 are located on the sixth floor of Building "C";

Apartments D-113 and D-114 are located on the first floor of Building "D";

Apartments D-213 and D-214 are located on the second floor of Building "D";

Apartments E-115, E-116, E-117 and E-118 are located on the first and second floors of Building "E".

2. Description. A description of each of the apartments, designating the layout, number of rooms, approximate floor area thereof and common interest appurtenant thereto, is as follows:

Apartments A-101, A-102, A-103, A-104, E-115, E-116, E-117 and E-118 each consists of two bedrooms, three bathrooms, a kitchen, a living/dining room, wardrobe closets, storage room and foyer containing a floor area of approximately 1,085 square feet, and two (2) lanais containing an area of approximately 153 square feet. Said apartments each have appurtenant thereto a common interest of 2.789%.

Apartments B-105, B-106, B-205, B-206, D-113, D-114, D-213 and D-214 each consists of two bedrooms, two bathrooms, a kitchen, a living/dining room, wardrobe closet and foyer containing a floor area of approximately 892 square feet, and one (1) lanai containing an area of approximately 76 square feet. Said apartments each have appurtenant thereto a common interest of 2.181%.

Apartments C-108, C-109, C-110, C-111, C-208, C-209, C-210, C-211, C-308, C-309, C-310, C-311, C-408, C-409, C-410, C-411, C-508, C-509, C-510, C-511, C-608, C-609, C-610 and C-611 each consists of one bedroom, one bathroom, a kitchen, a living/dining room, wardrobe closet and entry hall containing a floor area of approximately 572 square feet, and one (1) lanai containing an area of approximately 72 square feet. Said apartments each have appurtenant thereto a common interest of 1.451%.

Apartments C-107, C-112, C-207, C-212, C-307, C-312, C-407, C-412, C-507, C-512, C-607 and C-612 each consists of two bedrooms, two bathrooms, a kitchen, a living/dining room, wardrobe closet and foyer containing a floor area of approximately 852 square feet, and one (1) lanai containing an area of approximately 88 square feet. Said apartments each have appurtenant thereto a common interest of 2.118%.

3. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the lanai air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings and all fixtures originally installed therein.

COMMON ELEMENTS: The proposed Declaration provides that one (1) freehold estate is thereby designated in all of the remaining portions and appurtenances of the project, herein called "common elements", including specifically but not limited to:

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walkways, entrances and exits of said buildings;
- (c) All yards, grounds and landscaping;
- (d) All parking areas;
- (e) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;
- (f) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

INTEREST TO BE CONVEYED TO PURCHASERS: Each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project (herein called the "common interest"), and the same proportionate share in all common profits and expenses of the project and for all other purposes, including voting, as set forth herein. The common interest for each unit type is as follows:

<u>Unit Type</u>	<u>% Interest</u>
A	2.789
B	2.181
C-1	1.451
C-2	2.118

Each purchaser will secure an Apartment Deed conveying an apartment, together with said undivided percentage interest in the common elements of the buildings of the project, and conveying said undivided percentage interest in the land upon which the project is located.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The apartments shall be occupied and used only as private residential or vacation dwellings by the respective apartment owners and their tenants, families, domestic servants and social guests and for such other purposes which are compatible with the applicable zoning ordinances and this Declaration and the By-Laws attached hereto. The owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of this Declaration and the By-Laws attached hereto.

OWNERSHIP OF TITLE: A Preliminary Report dated August 30, 1982, issued by Title Guaranty of Hawaii, represents that the fee simple title to the property submitted to the regime is vested in Kihei Reef, a Washington limited partnership. The developer has submitted to the Commission an Agreement of Sale, Sub-Agreement of Sale and Assignment of Sub-Agreement of Sale which provide the developer with a contractual right to acquire the property.

ENCUMBRANCES AGAINST TITLE: The Preliminary Report dated August 30, 1982, issued by Title Guaranty of Hawaii, Inc. provides that the following are encumbrances against title to the property:

1. For any taxes that may be due and owing and a lien on the premises, reference is hereby made to the Office of the Tax Assessor, Second Division.

2. Agreement of Sale dated March 31, 1979 in the amount of \$1,500,000.00 by and between Kihei Reef, a limited partnership under the laws of the State of Washington, as vendor, and C. Chase Hoffman, husband of Marion N. Hoffman, as tenant in severalty, as to an undivided one-third (1/3) interest; Joseph J. Catalano, husband of Sally Marie Catalano, as tenant in severalty, as to an undivided one-third (1/3) interest; and John W. Godfrey, husband of Vyola A. Godfrey, as tenant in severalty, as to an undivided one-third (1/3) interest, as vendee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13589, Page 461, as amended by instrument dated April 1, 1981, recorded as aforesaid in Liber 15999, Page 174. Said Sub-Agreement of Sale, as amended, was assigned by instrument dated effective as of April 1, 1981 by and between John W. Godfrey, C. Chase Hoffman, Joseph J. Catalano and G. C. Development Co., Inc., as assignor, and Kihei Nalu Associates, a Hawaii limited partnership, as assignee, recorded as aforesaid in Liber 16148, Page 45.

3. Consent to above Agreement of Sale given by William Noboru Yasutomi, an unmarried person, and Janet Chiye Matsuoka, wife of Tomio Matsuoka, Trustees under the Hachiro Yasutomi Revocable Living Trust dated November 10, 1977, by instrument dated May 29, 1979, recorded as aforesaid in Liber 13743, Page 787.

4. Terms, conditions and provisions contained in Hachiro Yasutomi Revocable Living Trust dated November 10, 1977.

5. Agreement dated May 22, 1979, recorded as aforesaid in Liber 13745, Page 675, by and between the County of Maui, Department of Water Supply, and G. C. Development Co., Inc. (Applicant); re: conditions for approval of application for building permit of said Applicant.

6. Notice of Pendency of Action dated December 21, 1981 filed in the Circuit Court, First Circuit, State of Hawaii, Civil No. 68085, on December 21, 1981, and recorded as aforesaid in Liber 16059, Page 741; Charles Chase Hoffman and Joseph J. Catalano, Plaintiffs, vs. John Does 1-5, Jane Does 1-5, Doe Partnerships 1-5, Doe Corporations 1-5 and Doe Entities 1-5, Defendants. Re: Dissolution of the joint venture known as G.H.C. Komahana Kai and the premises described in Schedule C of the Preliminary Title Report dated August 30, 1982 may be subject to distribution to the individual joint venturers upon dissolution of said G.H.C. Komohana Kai.

7. Civil No. 6221 (2) (Pending) filed in the Circuit Court of the Second Circuit, State of Hawaii. COLIN W. RADFORD, FOSTER RADFORD, BARRY F. OWEN, as general Partners of KIHEI REEF, a Limited Partnership, and KIHEI REEF, "Plaintiffs" (Reuben S. F. Wong and Robert K. Matsumoto, Attorneys for Plaintiffs) vs. C. CHASE HOFFMAN, JOSEPH J. CATALANO and JOHN W. GODFREY, "Defendants". Re: Cancellation of that certain Agreement of Sale on or about March 31, 1979, etc.

NOTE: The developer advises that it plans to grant utility easements over portions of the lands of the project.

PURCHASE MONEY HANDLING: Copies of the executed Escrow Agreement dated April 26, 1982, between First Hawaiian Bank, as Escrow, and the developer and a specimen Condominium Reservation Agreement, Deposit Receipt and Contract have been filed with the Commission. On examination, the executed Escrow Agreement and the Sales Contract filed with the Commission are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended.

Among other provisions, the executed Escrow Agreement states that a purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest and less Escrow's Twenty-Five Dollar (\$25.00) cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

(a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held hereunder by Escrow; or

(b) If purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change, or ninety (90) days have elapsed since the Purchaser has accepted in writing the apartment or he has first occupied the apartment; or

(c) If the purchaser's funds were obtained prior to the issuance of a Final Public Report and the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or

(d) If the Final Public Report is not issued within one year from the date of issuance of the Preliminary Public Report; provided that if the Final Public Report is issued after the one-year period and a copy of the Final Public Report is delivered to the purchaser either personally or by registered or certified mail with return receipt requested, notwithstanding any law to the contrary, the purchaser shall have thirty (30) days from the date of delivery to exercise his right of refund and cancellation of obligation, after which period such right shall be deemed waived; provided, further, that such waiver shall be effective only if at the time the purchaser receives a copy of the Final Public Report, he is notified in writing of his right of refund and cancellation of obligation and the waiver of such right upon his failure to act within the thirty (30) day period.

The specimen Sales Contract filed with the Commission contains, among others, the following provisions:

1. Reservation Agreement.

(a) Notwithstanding any other provision of the Reservation Agreement to the contrary, it is expressly understood and agreed that if at the time of execution of the Reservation Agreement by the Purchaser and the Seller, a Final Public Report for the project has not been issued by the Real Estate Commission of the State of Hawaii, the Reservation Agreement shall not be legally binding upon either the Purchaser or Seller. In such event, the Reservation Agreement shall constitute only a "reservation", and not a binding contract. Seller shall have no obligation to sell and Purchaser shall have no obligation to buy the Apartment described above. The Reservation Agreement will not become a binding sales agreement unless and until: (i) a Final Public Report is issued on the project; (ii) Purchaser has receipted for or is deemed to have receipted for the Final Public Report; and (iii) the Seller and Purchaser have executed a separate confirmation letter in which they agree to render the Reservation Agreement a fully binding contract. AS LONG AS THE RESERVATION AGREEMENT CONSTITUTES A RESERVATION, IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE, AT THE OPTION OF EITHER PARTY, BY WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY. In the event of such termination, the Seller shall cause Escrow to refund all payments previously made by Purchaser without interest, and neither party shall have any other or further liability with respect to the project; provided

that if the Purchaser terminates the Reservation Agreement, then Escrow shall deduct from the refund to Purchaser the escrow cancellation fee and all costs incurred by Seller, Escrow, or any lending institution in processing the Reservation Agreement or the loan application; if Seller terminates the Reservation Agreement, then Seller shall pay the escrow cancellation fee.

(b) If the Reservation Agreement is entered into after the issuance of the Final Public Report on the project, then the provisions of this paragraph shall be of no force or effect and the Reservation Agreement shall be a fully binding contract upon Purchaser and Seller upon acceptance of the Reservation Agreement by Seller as provided in Paragraph F-21 of the Sales Contract.

2. Purchaser agrees for the sole benefit of Seller that until Seller has closed out the sale of all the apartments in the condominium project or until December 31, 1985, whichever shall first occur, that Purchaser will not enter into any "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which purchaser agrees to share expenses and/or rentals of apartments in the condominium project.

3. Final closing shall occur on the Date of Closing as defined in the Sales Contract. However, Purchaser is advised that Seller intends to preclose, regardless of the status of the construction of the apartments, by having all documents necessary for closing executed prior thereto and deposited with Escrow, and Purchaser agrees to execute all necessary documents for such closing, including irrevocable escrow instructions, upon request by Seller.

4. In the event any payment to be made by Purchaser is not made when due, such late payment shall bear interest at the rate of one percent (1%) per month until paid.

5. Purchaser shall pay all closing costs in connection with the sale of a unit including, without limitation, drafting of any mortgages and all costs related to obtaining same, all acknowledgment fees, all recording fees, the escrow fee, any proof of title and/or title insurance, the applicable conveyance taxes and drafting of the Apartment Deed.

6. If Purchaser, within thirty (30) days from the mailing or delivery to Purchaser by the Seller of a copy of the Final Public Report, or any Supplementary Public Report, shall fail to acknowledge receipt thereof, or shall fail to give his written approval or acceptance then Seller at its sole option may terminate the Sales Contract or may presume that Purchaser has approved or accepted such Public Reports.

7. Owner-Occupant Purchasers. The following provisions shall apply to Purchasers who are purchasing an apartment pursuant to the provisions of Part VI, Chapter 514A, Hawaii Revised Statutes; and execute the Owner-Occupant Sales Contract:

(i) Within thirty (30) calendar days following the end of the ten (10) calendar day period during which Seller is limited to selling to owner-occupants under the provisions of Part VI, Chapter 514A, Hawaii Revised Statutes, the Purchaser shall obtain such statements and documents as Seller may reasonably require to satisfy itself that Purchaser is financially capable of making, when due, all the required payments as set forth herein, either by way of cash payments and/or a commitment for financing such noncash portion of the purchase price; if such proof of financing or commitment for financing is not obtained within said period, the sales contract shall be cancelled by Seller, subject, however, to the approval of such cancellation by the lender financing the project.

(ii) If during the ten (10) calendar period following the issuance of the first public report on the project by the Real Estate Commission (A) the Purchaser desires to cancel the contract on account of hardship circumstances such as serious illness of the Purchaser or a member of Purchaser's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, or (B) indicates an intent not to become an owner-occupant of the apartment, Seller shall cancel this contract, subject, however, to the approval of such cancellation by the lender financing the project.

NOTE: PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THE SELLER'S MORTGAGE LOANS (CONSTRUCTION, RENEWALS AND EXTENSIONS) FOR THE PROJECT SHALL BE AND REMAIN AT ALL TIMES A SUPERIOR LIEN ON THE PROJECT, AND PURCHASERS INTENTIONALLY WAIVE AND SUBORDINATE THE PRIORITY OF LIEN UNDER THE SALES CONTRACT IN FAVOR OF THE MORTGAGE LOANS.

NOTE: DEVELOPER ADVISES THAT NO REPRESENTATIONS OR REFERENCES WILL BE MADE TO EITHER PURCHASERS OR PROSPECTIVE PURCHASERS CONCERNING RENTAL OF THE APARTMENT, INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE RENTAL OF THE APARTMENT, INCLUDING BUT NOT LIMITED TO, ANY REFERENCE OR REPRESENTATION TO THE EFFECT THAT DEVELOPER OR THE MANAGING AGENT OF THE PROJECT WILL PROVIDE, DIRECTLY OR INDIRECTLY, ANY SERVICES RELATING TO THE RENTAL OR SALE OF THE APARTMENT. RENTAL OF THE APARTMENT AND THE PROVISIONS OF MANAGEMENT SERVICES IN CONNECTION THEREWITH IS AND SHALL BE THE SOLE RESPONSIBILITY OF THE PURCHASER.

It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of residential

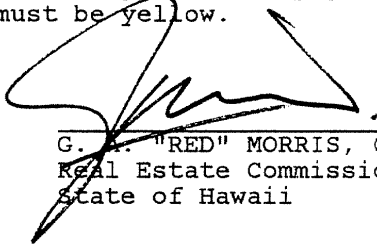
apartments are placed in trusts, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

MANAGEMENT AND OPERATIONS: The proposed Declaration provides that the operation of the project shall be conducted for the Association of Apartment Owners by a responsible managing agent who shall be appointed by the Association in accordance with the By-Laws. The developer advises that it intends to retain Chaney Brooks and Company, whose principal place of business is located at 606 Coral Street, Honolulu, Hawaii 96813, as the initial Managing Agent.

STATUS OF PROJECT: The developer has advised the Commission that it has established no estimated date for the completion of the project.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the developer in the required Notice of Intention submitted June 4, 1982, and additional information subsequently filed as of September 9, 1982.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 1503 filed with the Commission on June 4, 1982. This report when reproduced shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be yellow.



G. A. "RED" MORRIS, CHAIRMAN
Real Estate Commission
State of Hawaii

Distribution:
DEPARTMENT OF FINANCE
BUREAU OF CONVEYANCES
PLANNING COMMISSION,
COUNTY OF MAUI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 1503

September 23, 1982